CLERK'S COPY

143

TRANSCRIPT OF RECORD

15,533

Supreme Court of the United States

OCTOBER TERM, 1936

No. 621

THE FIRST NATIONAL BANK & TRUST COMPANY OF BRIDGEPORT, CONNECTICUT, TRUSTEE, PETITIONER,

vs.

FRANCIS E. BEACH

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITION FOR CERTIORARI FILED JANUARY 5, 1937.

CERTIORARI GRANTED MARCH 8, 1937.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1936

No. 621

THE FIRST NATIONAL BANK & TRUST COMPANY OF BRIDGEPORT, CONNECTICUT, TRUSTEE, PETITIONER,

vs.

FRANCIS E. BEACH

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

INDEX.

	Original	Print
Proceedings in U. S. C. C. A., Second Circuit	1	1
Agreed statement of facts under Equity Rule 77	1	1
Memorandum of decision of D. C. U. S., District of Connecticut, on order to show cause	12	7
Clerk's certificate (omitted in printing)	13	
Opinion, Hand, J.	15	9
Judgment	17	12
Clerk's certificate	19	13
Order allowing certiorari	20	13

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., MARCH 10, 1937.

—8820-C

[fol. 1]

IN UNITED STATES CIRCUIT COURT OF APPEALS, SECOND CIRCUIT

In the Matter of FRANCIS E. BEACH, Debtor.

AGREED STATEMENT OF FACTS UNDER EQUITY RULE 77

It is hereby stipulated by and between counsel for the respective parties to the appeal of Francis E. Beach, Debtor, from the order rendered by the Honorable Carroll C. Hincks, a Judge of the United States District Court for the District of Connecticut, on December 2, 1935, dismissing the petition of said Francis E. Beach, debtor, praying for an opportunity to effect a composition or extension of his debts under Section 75 of the Bankruptcy Act as amended to the date of the filing of said petition, that the questions presented by this appeal can be determined by the Circuit Court of Appeals for the Second Circuit without an examination of all the pleadings and evidence and that the following agreed statement of facts shows how the questions arose in said District Court and sets forth so much only of the facts alleged and proved, or sought to be proved, as is essential to a decision of such questions by the Circuit Court of Appeals for the Second Circuit:

[fol. 2] That on November 14, 1935, said Francis E. Beach, debtor, and the appellant herein filed a petition in the United States District Court for the District of Connecticut in which he alleges he is bona fide engaged primarily in farming operations and that he is bona fide engaged primarily in producing products of the soil, under Subsection R of said Section 75 of the Bankruptcy Act as amended, 11 U. S. C. A. 203 (r).

That said Francis E. Beach further alleges in said petition that he is unable to meet his debts as they mature.

That said Francis E. Beach prays in said petition for an opportunity to effect a composition or extension of his debts under said Section 75 of the Bankruptcy Act as amended and that his petition may be approved by the Court and proceedings had in accordance with the provisions of said Section.

That on said November 14, 1935, said petition was approved by Honorable Carroll C. Hincks, a Judge of the

United States District Court for the District of Connecticut as properly filed under said Section 75 of the Bankruptcy Act as amended and said petition was referred to the Conciliation Commissioner for Fairfield County, in the State of Connecticut.

That on November 21, 1935, the First National Bank & Trust Company of Bridgeport, Connecticut, as trustee, the owner of a mortgage on the farm property of said Francis [fol. 3] E. Beach, filed a petition in said Court praying for an order to be made on said debtor to show cause why the order of said Court approving the petition of said debtor as properly filed under said Section 75 of the Bankruptcy Act as amended, should not be vacated and the petition of said debtor dismissed on the ground that said debtor is not a "farmer" within the terms of Subsection R of said Section 75 of the Bankruptcy Act as amended by Act of Congress, 11 U. S. C. A. 203 r.

That on said November 21, 1935, the Honorable Carroll C. Hincks, a Judge of the United States District Court for the District of Connecticut issued an order to said debtor to appear in Court on November 27, 1935, and show cause why the prayer of said petition to show cause should not be granted.

That after a hearing on said cause order, the Honorable Carroll C. Hincks, on December 2, 1935, ordered the petition of said Francis E. Beach, praying for an opportunity to effect a composition or extension of his debts under Section 75 of the Bankruptcy Act as amended, dismissed on the ground that debtor is not a "farmer" within the purview of Sub-section R of said Section 75 of the Bankruptcy Act as amended, 11 U. S. C. A. 203 (r), inasmuch as the debtor's yearly income from 1930 to 1935 has been as follows: $200 from poultry and eggs; $75 from hay; $25 for vegetables and flowers; $2200 from the rental of his farm to others who [fol. 4] used it for their own purposes; and $1500 from rentals of other real estate not claimed to be "farm" property; and inasmuch as the item of $2200 received from the rental of the farm property is income to the debtor in his capacity as a landlord rather than as one who is "bona fide personally engaged in producing products of the soil, etc.," 11 U. S. C. A. 203 (r).

At the hearing of said order to show cause the following facts were alleged and proved, or sought to be proved:

That Francis E. Beach, the debtor and appellant herein is the owner of a farm situated on the east and west sides of the main highway through the town of Trumbull, in the county of Fairfield, and state of Connecticut, comprising 190 acres, more or less, with five houses and a barn thereon. That said debtor has lived on said farm from his birth occupying one of the houses thereon with his wife and children, as his homestead. That said farm has been in the possession of the debtor's family for over 200 years. That said debtor was engaged in the mercantile business from the year 1892 until the year 1930. That during said period the debtor was the owner of a number of mortgages and from time to time loaned money on mortgages. That in the year 1930, as the result of tremendous financial losses he returned to the operation of said farm and has been so doing from the year 1930, devoting the major portion of his time thereto.

[fol. 5] On said farm the debtor has an apple orchard of two hundred trees. In the year 1931, said orchard yielded 1500 bushels of choice apples which were sold in the market by the debtor. From 1933 to 1935 there has been little income derived from the apple crop because the trees have been affected by a blight. The farm also contains a few pear trees the yield of which is sold in the market by the debtor. In addition the debtor cultivates a large garden of about one acre of said farm, planting and raising all kinds of vegetables, fruits and flowers in a quantity more than sufficient to provide for his family. That the debtor also raises hay on said farm and sells the same, as hereinafter set forth. That, in addition thereto, the debtor has repaired the houses, cleaned out one of the wells, laid several miles of stone walls and laid two miles of barbed wire fence; that he has been carting stone from time to time with the aid of help to enable him to rebuild the fences; that he has raised potatoes on said farm and has sold them at wholesale, as hereinafter set forth.

That the debtor is engaged primarily in raising poultry and eggs on said farm having had in the year 1933, two hundred chickens thereon. That in the year 1935, the debtor had about fifty chickens thereon. That at the present time

the debtor has about fifty chickens thereon. That the debtor has three sheep on said farm kept for the purpose of providing food. That the debtor has one horse thereon which [fol. 6] is used for carting and hauling about the farm. That the debtor has a miscellaneous assortment of farm tools thereon none of which have been purchased since the year 1921. That on the tax lists of the town of Trumbull it does not appear that the debtor has listed any farm tools or equipment from 1930 to 1935.

That the debtor's total income per annum from 1930 to 1935 was $4000. The sum of $2200 thereof was derived from renting three-quarters of said farm to various individuals for grazing and cultivation purposes. That one of said tenants conducts a dairy on said farm and breeds, grazes, and milks a herd of cows thereon. That the sum of $200 thereof was derived from the sale of poultry and eggs. That the sum of $75 thereof was derived from the sale of hay. That the sum of $25 thereof was derived from the sale of vegetables and flowers. That the sum of $2200 was derived from the rental of three-fourths of the debtor's farm to others who used it for their own purposes. That the sum of $1500 was derived from the rentals from other real estate not claimed to be farm property.

That the First National Bank & Trust Company of Bridgeport, the creditor-mortgagee, and appellee herein, is a corporation duly organized under the laws of the United States of America and has its principal place of business in the City of Bridgeport, State of Connecticut. That said [fol. 7] bank as trustee is the owner of a certain mortgage on the farm property of the debtor, which mortgage is in the sum of $100,000. That said bank as trustee instituted a suit to foreclose said mortgage in the Superior Court for Fairfield County, State of Connecticut, which suit was returnable on the first Tuesday of June, 1931. That said suit was continued from time to time and various judgments have been entered therein which have been opened from time to time, and that a judgment in said suit was dated November 23, 1934, for the sum of $104,079.75 and that the law day for redemption by the debtor was set as the third Monday of November, 1935. That said property since February 1933 has been under the control of a receiver appointed by the said Superior Court to collect the rents

accruing from said property. That on November 15, 1935, a judge of said Superior Court upon being notified of the filing of the debtor's petition in the United States District Court ordered said judgment of foreclosure to be re-opened and to remain open subject to the determination of these proceedings.

At said hearing of said order to show cause the debtor raised the following questions of law, which were overruled by the Court.

1. That said debtor is an individual who is primarily bona fide personally engaged in producing products of the soil, an individual who is primarily bona fide personally [fol. 8] engaged in dairy farming, the production of poultry or livestock, or the production of poultry products or livestock products in their unmanufactured state under the terms of Sub-section R of Section 75 of the Bankruptcy Act as amended, 11 U. S. C. A. 203 (r) and as such entitled to the benefits of said Act.

2. That by virtue of said farming operations, the debtor is entitled to the classification of a "farmer" within the terms of said Section 75 of the Bankruptcy Act irrespective of whether or not the principal part of his income is derived from any one or more of said farming operations.

3. That the principal part of the debtor's income is derived from farming operations under the terms of said Subsection R, 11 U. S. C. A. 203 (r).

4. That the item of $2200 received as rental of the farm property to others is income to the debtor in his capacity as a farmer rather than as a landlord and should be so considered in determining whether or not the principal part of the debtor's income is derived from farming operations.

5. That the debtor is entitled to the benefits of said Section 75 of the Bankruptcy Act.

6. That the evidence was sufficient to establish that said debtor is a "farmer" within the provisions of said Section 75 of the Bankruptcy Act and as such entitled to the benefits thereof.

[fol. 9] At said hearing of said order to show cause the creditor-mortgagee, and appellee herein raised the following question of law:

1. That the total income of the debtor per annum of $4000 being derived as follows: $2200 from rental of the debtor's property for grazing and cultivation purposes, $200 from the sale of poultry and eggs, $75 from hay, $25 from fruit, flowers and vegetables, $1500 from the rental of other real estate not claimed to be farm property; that the debtor actually cultivated about one acre of the land on said farm; and upon this statement of fact the debtor was not a "farmer" as a matter of law within the purview of the said Sec. 75 of the Bankruptcy Act as amended.

In said appeal the debtor, the appellant herein, filed the following assignment of errors based on the ruling of said District Court:

1. That said order rendered on December 2, 1935, and the memorandum of opinion upon which it is based, is contrary to law in all respects.

2. That the District Court erred in dismissing the petition of Francis E. Beach, debtor praying for an opportunity to effect a composition or extension of his debts under Section 75 of the Bankruptcy Act as amended.

3. That the District Court erred in holding that said Francis E. Beach, debtor, is not an individual who is pri- [fol. 10] marily bona fide personally engaged in producing products of the soil, or an individual who is primarily bona fide personally engaged in dairy farming, the production of poultry or livestock, or the production of poultry products or livestock products in their unmanufactured state, or that the principal part of his income is not derived from any one or more of the foregoing operations, under Subsection R of Section 75 of the Bankruptcy Act as amended by Act of Congress dated May 15, 1935.

4. That the District Court erred in holding that said Francis E. Beach, debtor is not entitled to the benefits of said Section 75 of the Bankruptcy Act as amended by Act of Congress dated August 28, 1935.

5. That the District Court erred in holding that the item of $2200 received as rental from the farm property is in-

come to the debtor in his capacity as a landlord rather than as one who is bona fide personally engaged in producing products of the soil, under said Subsection R of Sec. 75 as amended by Act of Congress dated May 15, 1935.

6. That the District Court erred in holding that less than one-tenth of the debtor's income is derived from farming operations.

7. That the testimony is not sufficient to support the conclusions reached by the District Court that the said Francis E. Beach, debtor, is not entitled to the benefits of Section 75 of the Bankruptcy Act as amended.

[fol. 11] Henry Greenstein, Attorney for Francis E. Beach, Appellant. Arthur B. Weiss, Attorney for The First National Bank and Trust Company of Bridgeport, Connecticut, Trustee, Appellee.

Dated at Bridgeport, Connecticut, March 11, 1936.

Approved: Carroll C. Hincks, U. S. D. J.

Dated at New Haven, Connecticut, March 11, 1936.

[fol. 12] In United States District Court, District of Connecticut

No. 16,627

In the Matter of Francis E. Beach, Debtor

Memorandum of Decision on Order to Show Cause

At the hearing upon the show cause order herein held this day, in addition to evidence from other sources, the debtor himself testified that for the year 1935 his income had been as follows: $200. from poultry and eggs; $75. from hay; $25. for vegetables and flowers; $2200. from the rental of his farm to others who used it for their own purposes; and $1500. from rentals from other real estate not claimed to be "farm" property.

It was conceded that the debtor's activities during the years prior to 1935 would not strengthen his claim that he is a farmer within the meaning of Sec. 75 of the Bankruptcy Act, as amended.

On this showing I am constrained to rule that the item of $2200, received as rental from the farm property, is income to the debtor in his capacity as a landlord rather than as one who is "bona fide personally engaged in producing products of the soil, etc." That being so, it results that [fols. 13-14] less than one-tenth of the debtor's income is derived from farming operations, and he cannot be held to be "primarily * * * engaged in producing products of the soil". 11 U. S. C. A. 203 (r).

It follows that the debtor's petition must be dismissed and there is no need to pass upon the petitioner's contention that the section of the Act just cited is unconstitutional and void.

So Ordered.

Dated at New Haven this 2nd day of December, 1935.

Carroll C. Hincks, United States District Judge.

Clerk's certificate to foregoing transcript omitted in printing.

[fol. 15] UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT, OCTOBER TERM, 1936

Argued Oct. 7, 1936. Decided Nov. 9, 1936

No. 26

In Re FRANCIS E. BEACH, Debtor

FIRST NATIONAL BANK & TRUST COMPANY OF BRIDGEPORT, CONNECTICUT, Appellee

v.

FRANCIS E. BEACH, Appellant

Appeal from the District Court of the United States for the District of Connecticut

Before Manton, L. Hand, and Swan, Circuit Judges

Appeal from an order of the District Court for the District of Connecticut, granting a motion to dismiss a petition filed under section 75 of the Bankruptcy Act, as amended (11 U. S. C. A. § 203).

Sydney P. Simons, of Bridgeport, Conn., for appellant.
Arthur B. Weiss, of Bridgeport, Conn., for appellee.

L. HAND, Circuit Judge:

This is an appeal from an order dismissing a petition of the debtor filed under section 75 (c) of the Bankruptcy Act (11 U. S. C. A. § 203 (c)-. On November 14, 1935, the debtor filed the petition alleging that he was a farmer, and asking that he be given an opportunity to compromise or extend his debts. On the same day the judge approved the petition and referred the cause to the proper conciliation commissioner; so the matter stood on November twenty-first, when the First National Bank of Bridgeport, a creditor and mortgagee, moved the court that the proceeding be dismissed, because the debtor was not in fact a farmer, as defined by section 75 (r), as amended (11 U. S. C. A. § 203 (r)-. On December second the judge entered an order granting this motion, and the debtor appealed with leave of this court.

The facts were stipulated as follows. Beach was the owner of a farm of about one hundred and ninety acres, with five houses and a barn on it, where he had lived from his birth, occupying one of the houses with his wife and children, as his homestead. He had been engaged in mercantile pursuits until the year 1930, but in that year as the result of financial losses he began to devote the greater part of his time to work on the place. The land had an apple orchard of two hundred trees, which in 1931 yielded fifteen hundred bushels of apples; but from 1933 to 1935 he got little from his crop because of a blight. He had a few pear trees; and he cultivated a large garden of about one acre, planting and raising all kinds of vegetables, fruits and flowers, more than enough to provide for his family. He raised hay and sold it; repaired the houses, cleaned out one of the wells, laid several miles of stone walls and two miles of barbed wire fence; carted stone from time to time to rebuild his fences; and raised and sold potatoes. He was engaged primarily in raising poultry and eggs, having two hundred chickens in 1933, and about fifty from 1935 to the time of the trial. He kept three sheep for food; one horse, for carting and hauling; and a miscellaneous assortment of farm tools none purchased since 1921. His total income per annum from 1930 to 1935 was $4,000, of which $2,200 was derived from renting three-quarters of the farm to various persons for grazing and cultivation. One of [fol. 16] these tenants conducted a dairy and bred, grazed and milked a herd of cows. Beach earned $200 from the sale of poultry and eggs, $75 from the sale of hay; and $25 from the sale of vegetables and flowers. The rentals from other real estate, not claimed to be farm property, made up the remainder of his income, $1,500.

In spite of the fact that he gave most of his time to work about his farm, we think that Beach was not "primarily * * * personally engaged" in farming. He would not have been so regarded before the enactment of section 75, and we see no reason to impute another meaning to such nearly identical language as it contains. Swift v. Mobley, 28 F. (2d) 610 (C. C. A. 5); In re Spengler (D. C.) 238 F. 862; In re McMurray (D. C.) 8 F. Supp. 449; In re Weis (D. C.) 10 F. Supp. 227. Again, it was also settled that a person who lived on income derived from a farm was not a farmer under section 4 (b), as amended (11 U. S. C. A. §

22 (b)-. In re Glass, 53 F. (2d) 844 (C. C. A. 7); In re Matson (D. C.) 123 F. 743; In re Driver (D. C.) 252 F. 956; In re Brown (D. C.) 284 F. 899. But section 75 (r), as amended (11 U. S. C. A. § 203 (r)-, certainly meant to broaden the class, by contrasting those "personally bona fide engaged" in husbandry with those who merely drew their principal income from it. It seems to us either that "personally" must mean "without any assistants," or that the second clause includes those who live by rents from the farm operations of tenants. We reject the first alternative; a man is no less a farmer because he hires laborers, either regularly or sporadically; he is "personally" engaged in farming, though, being in possession, he rides his acres and superintends the manual labors of others. On the other hand it is certainly a great abuse of words to call that man a farmer, who merely lives upon the yield of farm lands; nor can we see that this is much bettered by confining the clause to leases in which the tenant pays in kind. Nevertheless, notwithstanding the violence done to ordinary usage, we cannot escape the literal meaning of the words chosen. Such a result does not, moreover, violate the probabilities as much as one might at first blush suppose. The occasion for the legislation was the collapse of farm values, following upon the depression, and indeed preceding it. There was a large class who had rented their farms to others, but who were as dependent upon the yield as though they worked the land themselves as they usually had done originally. These people were ordinarily in the same *case* as those who actually farmed; it is not unreasonable to ascribe to Congress an intention to succor them with the rest. Mortgagees may indeed be outside the class, even though the interest be in fact paid out of the earnings of the mortgaged farm; we have not such a case before us. Nor need we hold that the lessor of a farm is within the clause, if the lessee pays the rent from other sources than his own farming. But when the debtor's principal income in fact comes out of the land, we find it impossible to give reasonable effect to the language used, unless we call him a farmer. No circuit court of appeals has passed upon the point; the only district court opinion which does so is In re Hilliker, 9 F. Supp. 948. The judge there appears to have taken the other view, though it was not necessary to the decision; but we cannot agree

that the scope which he leaves to the clause, fills out the full measure of its meaning.

Order reversed.

SWAN, Circuit Judge (dissenting):

I am unable to concur in my brothers' construction of the statute.

[fol. 17] UNITED STATES CIRCUIT COURT OF APPEALS, SECOND CIRCUIT

At a stated term of the United States Circuit Court of Appeals, in and for the Second Circuit, held at the United States Court House, in the City of New York, on the 16th day of November, one thousand nine hundred and thirty-six.

Present: Hon. Martin T. Manton, Hon. Learned Hand, Hon. Thomas W. Swan, Circuit Judges.

In the Matter of FRANCIS E. BEACH, Debtor-Appellant

Appeal from the District Court of the United States for the District of Connecticut

This cause came on to be heard on the transcript of record from the District Court of the United States for the District of Connecticut, and was argued by counsel.

On Consideration Whereof, it is now hereby ordered, adjudged, and decreed that the order of said District Court be and it hereby is reversed with costs. Further ordered that the order for mandate of this Court heretofore entered herein be and the same hereby is vacated and set aside.

It is further ordered that a mandate issue to the said District Court in accordance with this decree.

Wm. Parkin, Clerk.

[fol. 18] [Endorsed:] United States Circuit Court of Appeals, Second Circuit. In re Francis E. Beach, Order for Mandate. United States Circuit Court of Appeals, Second Circuit. Filed Nov. 16, 1936. William Parkin, Clerk.

[fol. 19] UNITED STATES OF AMERICA,
Southern District of New York:

I, William Parkin, Clerk of the United States Circuit Court of Appeals for the Second Circuit, do hereby certify that the foregoing pages, numbered from 1 to 18, inclusive, contain a true and complete transcript of the record and proceedings had in said Court, in the case of In the Matter of Francis E. Beach, Debtor-Appellant, as the same remain of record and on file in my office.

In Testimony Whereof, I have caused the seal of the said Court to be hereunto affixed, at the City of New York, in the Southern District of New York, in the Second Circuit, this second day of December, in the year of our Lord one thousand nine hundred and thirty-six, and of the Independence of the said United States the one hundred and sixty-first.

Wm. Parkin, Clerk. (Seal United States Circuit Court of Appeals, Second Circuit.)

[fol. 20] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed March 8, 1937

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Second Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Endorsed on cover: File No. 41,161. U. S. Circuit Court of Appeals, Second Circuit. Term No. 621. The First National Bank & Trust Company of Bridgeport, Connecticut, Trustee, petitioner, vs. Francis E. Beach. Petition for a writ of certiorari and exhibit thereto. Filed January 5, 1937. Term No. 621, O. T., 1936.